IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 964 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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NATIONAL INSURANCE COMPANY LTD.

Versus

KALKIBEN BALDEVBHAI

Appearance:

1. Civil Revision Application No. 964 of 2002

MS MEGHA JANI for Petitioner No. 1

MR PANKAJ A KAPADIA for Respondent No. 1

MR ASHESH K AMIN for Respondent No. 2

MR MAULIK J SHELAT for Respondent No. 2

..... for Respondent No. 3-5

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 05/08/2002

ORAL JUDGEMENT

Heard the learned Advocate for the petitioner as

well as learned Advocate for respondent no.2 and perused the papers. It seems that the tribunal has passed an award in favour of respondent no.1 and against respondent no.2 herein, who was the driver of the motor vehicle involved in the accident in question. Thereafter, the second respondent preferred a civil miscellaneous application before the said tribunal showing that the order was passed ex-parte and, therefore, it may be set aside. The second respondent also prayed that the vehicle involved in the accident was covered by insurance, and therefore, the Insurance Company and owner may be joined as a party to the said litigation. After hearing the concerned parties, the learned tribunal passed an order dated 6.10.1999 allowing the said application. The learned tribunal also directed that the award passed in Motor Accident Claim Petition No.78/88 be set aside and the matter be restored to file. The learned tribunal also directed that the concerned owner of the vehicle and Insurance Company be made party to the said proceedings. Feeling aggrieved by the said order of the tribunal, the petitioner-Insurance Company has preferred this revision application before this Court. It has been first contended that the order has been passed in collusion between the claimants and respondent no.2 and, therefore, it must be set aside. It is true that in order at page 14, there is no mention about the same but the proceedings are shown to have been concluded with the aforesaid order at page 14, which means the said order has been passed with the consent of the parties. However, simply because there is consent, it cannot be said that there is collusion damaging or causing injury to the present petitioner. It is required to be considered that even by the impugned order, the earlier award passed in favour of the respondent no.1 and against respondent no.2 has been set aside and now the tribunal will have to deal with the said petition afresh and will have to decide afresh as to whether respondent no.1 herein is entitled to compensation and if yes, from whom. Therefore, so far as those meritorial aspects are concerned, they are still open to be decided. Therefore, even if the parties have consented to the order, the order in question cannot be treated to be illegal on the face of it on that count.

2. Another contention raised is that respondent no.2 has actually appeared before the tribunal and written statement was also filed. Therefore, it cannot be treated to be an ex-parte order. Under Order 9 Rule 13 of the Code of Civil Procedure, 1908, it is very clear that an award may be passed ex-parte if a party does not appear in the prosecution of the case. Such an exparte

order can also be passed if a particular opponent remains absent after appearing at the first instance and after filing written statement also. In the present case, it is found that after filing of written statement, respondent no.2 did not appear before the tribunal. The reasons were given in the aforesaid application to the efect that the second respondent was of the view that the tribunal will deal with the matter with the Insurance Company and the owner of the vehicle. But on receipt of the certified copy of the award, the second respondent came to know that neither the owner nor the Insurance Company was party to the award and, therefore, the award was passed only against respondent no.2. Therefore, he felt aggrieved and filed the aforesaid application for setting aside the said exparte award. In that view of the matter, it can be said that the tribunal has not committed any illegality in setting aside the said order which was passed by the tribunal exparte.

3. In that view of the matter, the order in question which is impugned in this revision application cannot be treated to be illegal and perverse and, therefore, this is not a fit case for exercising revisional jurisdiction.

4. The Learned Advocate for the petitioner also contended that the Insurance company was not served with notice before setting the exparte award. It is very clear that the Insurance Company was not a party when the award was passed against the driver only. Therefore, there was no question of issuing notice to the Insurance Company before setting aside the exparte award.

5. Learned advocate for respondent no.2-original driver contends that this revision application is not maintainable since the Insurance Company was not party to the award. However, the Insurance Company has already been ordered tobe joined as a party to the petition subsequently and, therefore, the said order can be challenged by the Insurance Company and, therefore, this would not be a ground for disallowing the present revision application.

6. For the foregoing reasons, there is no merit in this revision application and the same is accordingly dismissed. Notice discharged. No order as to costs.

5.8.2002 [D P Buch, J.]
msp